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In the Supreme Court of the United States

OCTOBER TERM, 1993

NATIONAL ORGANIZATION FOR WOMEN, INC., ETC., ET AL., PETITIONERS

v.

JOSEPH SCHEIDLER, ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

BRIEF FOR THE UNITED STATES AS AMICUS CURIAE SUPPORTING PETITIONERS

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QUESTION PRESENTED

Whether 18 U.S.C. 1962(c) and (d) require proof of economic motivation either in the racketeering enterprise or in the racketeering acts.

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INTEREST OF THE UNITED STATES

The Racketeer Influenced and Corrupt Organizations Act (RICO), 18 U.S.C. 1961 *et seq.*, imposes criminal and civil liability for specified forms of racketeering activity. The United States brings both criminal prosecutions and civil actions under RICO. This case presents an issue that arises in both criminal and civil actions: Whether RICO requires proof that the racketeering enterprise or the acts of racketeering had a mercenary purpose. The court of appeals held that it does. If adopted by this Court, the court of appeals' restrictive construction of RICO

could impair the United States' ability to prosecute acts of terrorism and violence assertedly motivated by political or religious purposes. Accordingly, the United States has a significant interest in the Court's resolution of this case.

STATUTE INVOLVED

The pertinent provisions of RICO, 18 U.S.C. 1961 *et seq.*, are set forth in an appendix to this brief.

STATEMENT

1. Petitioners are a national non-profit organization that supports the legal availability of abortion, and two health centers that perform abortions. Respondents are several individuals and organizations that oppose abortion, and a medical laboratory that formerly provided services to the two petitioner health centers. Pet. App. A2-A3, B2-B3; *id.* at A4-A5.

In October 1986, petitioners sued respondents in the United States District Court for the Northern District of Illinois, alleging violations of the Sherman Act, 15 U.S.C. 1 *et seq.*, and the Racketeer Influenced and Corrupt Organizations Act (RICO), 18 U.S.C. 1962(a), (c), and (d), as well as several pendent state-law claims. Petitioners sought injunctive relief, as well as treble damages, costs, and attorneys' fees. Following discovery, the complaint was amended twice in 1989. In March 1991, petitioners filed a "RICO Case Statement" that further detailed their allegations.[1]

[1] Pursuant to local rules, some district courts require RICO plaintiffs to submit a "RICO Case Statement" detailing, among other things, the enterprise, the pattern, the victims, and the participants involved. Those case statements are merely ex-

As amended, the complaint alleged that respondents were members of a nationwide conspiracy to shut down abortion clinics through a pattern of extortion. Petitioners alleged that respondents (other than respondent Vital-Med Laboratories, Inc.)[2] and their co-conspirators used force and threatened the use of force to induce doctors and clinic employees to give up their economic rights to employment, and to induce patients to give up their rights to medical services. Specifically, the complaint charged that respondents physically and verbally intimidated clinic personnel and patients; invaded clinics and damaged their equipment; blocked clinic entrances and exits; coordinated telephone campaigns to tie up clinic telephones; set up appointments under false pretenses to prevent legitimate patients from making appointments; established competing pregnancy testing and counseling facilities near the clinics; and interfered with the clinics' business relationships with landlords, patients, personnel, and medical laboratories. The RICO Case Statement further alleged that respondents and their co-conspirators engaged in bombings and numerous acts of arson and attempted arson to carry out the extortion scheme. With respect to

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tensions of the pleadings and thus may properly be (and routinely are) considered by courts in deciding motions under Fed. R. Civ. P. 12(b)(6). See *McLaughlin* v. *Anderson*, 962 F.2d 187, 189 (2d Cir. 1992); *Guidry* v. *Bank of LaPlace*, 954 F.2d 278, 281 (5th Cir. 1992); *Glessner* v. *Kenny*, 952 F.2d 702, 712 n.9 (3d Cir. 1991); *Miranda* v. *Ponce Federal Bank*, 948 F.2d 41, 44 n.3 (1st Cir. 1991).

[2] As to respondent Vital-Med, petitioners alleged that it participated in the conspiracy by aiding numerous thefts of fetal remains from one of Vital-Med's laboratories during 1988. See Pet. App. A4-A5.

their substantive and conspiracy claims based on 18 U.S.C. 1962(c), petitioners alleged that the racketeering "enterprise" was respondent Pro-Life Action Network (PLAN), a coalition of anti-abortion groups. Pet. App. A2-A3 & n.5, A4; *id.* at B2-B3.

2. The district court dismissed the case pursuant to Rule 12(b)(6), Fed. R. Civ. P. The court first concluded that the Sherman Act does not apply when the activities complained of are "essentially political," and the parties are not "commercial competitors." Pet. App. B3-B8. The court next rejected petitioners' claim under 18 U.S.C. 1962(a), which generally proscribes investing racketeering income to acquire or maintain an interest in an enterprise, because the "income" alleged by petitioners consisted of voluntary donations from persons opposed to abortion, which "in no way were derived from the pattern of racketeering alleged in the complaint." Pet. App. B9.

The court then concluded that petitioners failed to state a claim under 18 U.S.C. 1962(c), which makes it unlawful to conduct the affairs of an enterprise through a pattern of racketeering activity. Relying on the Second Circuit's opinion in *United States* v. *Ivic*, 700 F.2d 51 (2d Cir. 1983), and its progeny, the court held that RICO embodies "an economic motive requirement * * * to the extent that some profit-generating purpose must be alleged in order to state a RICO claim [under Section 1962(c)]." Pet. App. B13. Because "the primary objective of the alleged enterprise and its pattern of predicate acts was to drive clinics that perform abortions out of business," and the predicate acts were not "crimes in which the necessary goal was to obtain money,"

id. at B15, the court concluded that petitioners failed "to allege the economic motivation requirement of RICO," *id.* at B16. In light of its dismissal of petitioners' claims under 18 U.S.C. 1962(a) and (c), the court also dismissed the claim that respondents conspired to violate those sections, in violation of 18 U.S.C. 1962(d). Pet. App. B16. Finally, the court declined to exercise jurisdiction over the pendent state-law claims because of its dismissal of all the federal claims. *Id.* at B16-B17.

3. The court of appeals affirmed. Pet. App. A1-A35. The court first held that the antitrust claim was properly dismissed, noting that respondents are not involved in business and have no ability to concentrate economic power. *Id.* at A15-A16. The court also agreed with the district court's conclusion that the voluntary contributions received by respondents from their supporters are not income "derived, directly or indirectly, from a pattern of racketeering activity," and accordingly that those contributions cannot support petitioners' claim under 18 U.S.C. 1962(a). Pet. App. A20-A24.

The court of appeals next turned to petitioners' claim that respondents conducted the affairs of PLAN through a pattern of racketeering activity, in violation of 18 U.S.C. 1962(c). The court agreed (Pet. App. A32-A33) with the Third Circuit's conclusion in *Northeast Women's Center, Inc.* v. *McMonagle*, 868 F.2d 1342 (3d Cir.), cert. denied, 493 U.S. 901 (1989), that conduct of the type alleged by petitioners constitutes extortion under the Hobbs Act, 18 U.S.C. 1951—a predicate crime under RICO. The court disagreed, however, with *McMonagle*'s conclusion that a pattern of such conduct is actionable

under RICO. Pet. App. A32-A33. Like the district court, the court of appeals elected to follow instead the Second Circuit's decision in *Ivic*, which held that an "economic motive" requirement is implicit in the "enterprise" element of the offense. The court therefore concluded that "non-economic crimes committed in furtherance of non-economic motives are not within the ambit of RICO." *Id.* at A32. Because it was "clear that the aim of the extortion[s] [was] to close women's health centers" rather than to raise funds, and because the economic effect of respondent's conduct did not establish the "economic motive required by *Ivic* and its progeny," the court concluded that petitioners failed to state a claim under 18 U.S.C. 1962(c). Pet. App. A33-A34. In light of its conclusions concerning petitioners' substantive RICO claims, the court also affirmed the dismissal of the conspiracy claim under 18 U.S.C. 1962(d). Pet. App. A34.

SUMMARY OF ARGUMENT

A. The issue in this case is whether Sections 1962(c) and (d) of RICO require proof of economic motivation either in the racketeering enterprise or in the racketeering acts. Section 1962(c) broadly declares that "[i]t shall be unlawful for any person employed by or associated with any enterprise engaged in, or the activities of which affect, interstate or foreign commerce, to conduct or participate, directly or indirectly, in the conduct of such enterprise's affairs through a pattern of racketeering activity." Section 1962(d) proscribes conspiracies to violate Section 1962(c).

The court of appeals believed that proof of an economic motive is required by the "enterprise" ele-

ment of RICO, the meaning of which the court derived from the context in which the term is used in Sections 1962(a) and (b). That analysis is erroneous in several respects. Congress did not leave the meaning of "enterprise" to interpretation, but specifically defined it in terms that do not restrict it to organizations with an economic purpose. Moreover, even if Sections 1962(a) and (b) apply only to business enterprises, it does not follow that entities that cannot violate those two sections are thereby immunized from the reach of Sections 1962(c) and (d). As this Court has recognized, the inapplicability of the full range of statutory provisions to an entity does not imply that the entity can *never* be a RICO "enterprise." *United States* v. *Turkette*, 452 U.S. 576, 587 (1981). The implausibility of the court of appeals' statutory analysis is demonstrated by the fact that the court of appeals and the cases on which it relied all hold that the "enterprise" need not have an economic purpose at all if the racketeering acts are motivated by such a purpose.

The court of appeals relied on the legislative history of RICO, which reflects that a principal concern of Congress was the evil of organized crime, and also adverted approvingly to other courts' reliance on 1981 guidelines promulgated by the Department of Justice for use by prosecutors in RICO cases. Neither supports the conclusion reached by the court of appeals. First, this Court has often emphasized that the scope of a statute is not limited to the applications explicitly mentioned in its legislative history. The Court accordingly has refused to limit RICO to organized crime, noting that "Congress for cogent reasons chose to enact a more general statute, one

which, although it had organized crime as its focus, was not limited in application to organized crime." *H.J. Inc.* v. *Northwestern Bell Telephone Co.*, 492 U.S. 229, 248 (1989). Second, the internal guidelines to which the court of appeals adverted have long been superseded and are, in any event, irrelevant. Guidelines promulgated by the Justice Department to guide the exercise of prosecutorial discretion do not represent a construction of RICO that is entitled to deference by courts under principles of administrative law.

The "economic motive" requirement endorsed by the court of appeals also poses serious definitional problems. A political or religious organization engaging in a pattern of unlawful acts may do so principally for non-economic reasons, but the organization may nonetheless derive some incidental economic benefits from those acts. The court of appeals' analysis leaves it entirely unclear how much economic benefit would be enough to convert "political" or "religious" conduct into "economic" conduct falling within the ambit of RICO. Whether acts of extortion or arson are motivated by a long-term political or religious purpose, or whether that purpose is being claimed in a given case as a convenient pretext for more mundane criminal aims, is a difficult question to resolve. It is also a question that is irrelevant to the policies of RICO, since the economic and societal effects of a pattern of arson, extortion, or other racketeering acts are the same irrespective of the motives of those involved.

B. The courts below rested their decision to dismiss solely on their incorrect conclusion that RICO requires proof that the defendant was motivated by an "economic purpose." Those courts have had no

opportunity to assess respondents' motion to dismiss under the correct legal standards. Under the correct legal standards, it is clear that petitioners have properly alleged each element of a RICO violation under 18 U.S.C. 1962(c) and (d), and that the courts below therefore erred in dismissing their claims.

ARGUMENT

RICO DOES NOT REQUIRE THAT A DEFENDANT BE MOTIVATED BY AN ECONOMIC PURPOSE IN ORDER TO BE HELD LIABLE UNDER 18 U.S.C. 1962(c) AND (d)

This case presents the question whether RICO requires proof that either the racketeering enterprise or the predicate acts of racketeering were motivated by an economic purpose. Following the Second Circuit's lead in *United States* v. *Ivic*, 700 F.2d 51 (2d Cir. 1983), and with no independent analysis of their own, the Seventh and Eighth Circuits have concluded that the "enterprise" element of RICO requires proof of such an economic motivation. See *National Organization for Women, Inc.* v. *Scheidler*, 968 F.2d 612, 625-630 (7th Cir. 1992) (decision below); *United States* v. *Flynn*, 852 F.2d 1045, 1052 (8th Cir.), cert. denied, 488 U.S. 974 (1988). Those decisions conflict with the result reached by the Third Circuit in *Northeast Women's Center, Inc.* v. *McMonagle*, 868 F.2d 1342 (3d Cir.), cert. denied, 493 U.S. 901 (1989). See also *United States* v. *Webster*, 669 F.2d 185, 186-187 (4th Cir.) (enterprise need not be organized for profit) (dictum), cert. denied, 456 U.S. 935 (1982). For the reasons that follow, this Court should conclude that RICO imposes no "economic motivation" requirement.

A. The Language And Purposes Of RICO Are Inconsistent With A Requirement That The Defendant Be Motivated By An Economic Purpose

1. In construing RICO, this Court has consistently emphasized that the statutory language "must ordinarily be regarded as conclusive." *United States* v. *Turkette*, 452 U.S. 576, 580 (1981). See also *Reves* v. *Ernst & Young*, 113 S. Ct. 1163, 1169 (1993). That principle governs this case. Section 1962(c) makes it "unlawful for any person employed by or associated with any enterprise * * * to conduct or participate, directly or indirectly, in the conduct of such enterprise's affairs through a pattern of racketeering activity." Nothing in that broad proscription suggests a congressional design to reach only conduct involving economic motivations, goals, or purposes.

Thus, the phrase "racketeering activity" means conduct that is "chargeable" or "indictable" under a wide range of state and federal laws, including predominantly non-economic crimes such as murder, arson, and obstruction of justice, 18 U.S.C. 1961(1). The "enterprise" element, in which the court of appeals purported to find an "economic motive" limitation, is no less broad. Section 1961(4) provides that " 'enterprise' includes any individual, partnership, corporation, association, or other legal entity, and any union or group of individuals associated in fact although not a legal entity." That definition, which uses the words "any" and "includes"—as distinct from the word "means" used in other RICO definitions, see, *e.g.*, 18 U.S.C. 1961(6)—is not susceptible to a narrow and grudging interpretation. Nor is there any suggestion in that definition that it is restricted to organizations having a mercenary purpose.

In *United States* v. *Turkette*, this Court noted that "[t]here is no restriction upon the associations embraced by the definition [of enterprise]"; the Court there rejected the claim that the term should be confined to "legitimate" organizations—a claim that parallels the claim made here, that the term should be confined to organizations with an economic purpose. 452 U.S. at 580.[3]

2. In narrowing the scope of the statutory language, the court of appeals relied principally (Pet. App. A28-A30) on the statutory analysis of *Ivic*. In that case, the Second Circuit reversed the Section 1962(c) convictions of Croatian nationalists who had plotted to "use terror, assassination, bombings, and violence," *United States* v. *Ivic*, 700 F.2d at 58, to further the political cause of Croatian independence. The Second Circuit noted that the term "enterprise" is used in Sections 1962(a) and (b), which prohibit (1) using racketeering income to acquire an interest in an enterprise, or to establish or operate an enterprise, and (2) maintaining an interest in or control of an enterprise through a pattern of racketeering activity or collection of an unlawful debt. As used in those sections, the Second Circuit explained, the term "quite clearly refers to the sort of entity in which funds can be invested and a property interest

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[3] This is not to suggest that economic factors are entirely irrelevant to RICO. All of the RICO prohibitions require that the enterprise be engaged in or that its activities affect interstate or foreign commerce. See 18 U.S.C. 1962(a), (b), and (c). In addition, RICO requires that a civil plaintiff show that he has been "injured in his business or property" by the conduct constituting the RICO violation. 18 U.S.C. 1964(c). Respondents do not suggest that petitioners cannot meet those modest requirements.

of some sort acquired, and hence the sort of entity which one joins to make money." *United States* v. *Ivic*, 700 F.2d at 60-61. The *Ivic* court therefore concluded that a parallel limitation must be read into Section 1962(c).

We believe the Second Circuit's statutory analysis misses the mark for several reasons. First, because the term "enterprise" is defined by RICO, the *Ivic* court erred in seeking its meaning from the various contexts in which the term is used in the statute, rather than simply applying the broad definition enacted by Congress.

Second, the Second Circuit erred in concluding that, as used in Sections 1962(a) and (b), the term "enterprise" refers solely to an entity in which funds can be invested or a property "interest" of some sort can be acquired. That conclusion ignores the fact that those sections also outlaw using racketeering funds in the "operation" of any enterprise, 18 U.S.C. 1962(a), as well as maintaining "control" of an enterprise through racketeering, 18 U.S.C. 1962(b). An enterprise can be "operat[ed]" or "controll[ed]" within the meaning of Sections 1962(a) and (b) even if it is not an entity in which funds can be invested or a property interest acquired. The Second Circuit's construction of the term "enterprise" also ignores the holding of *Turkette*, since the illegitimate associations *Turkette* found to be statutory "enterprises" will rarely if ever be the types of entities in which formal investments can be made, or in which traditional property interests can be acquired. See *Russello* v. *United States*, 464 U.S. 16, 24 (1983). And it is inconsistent with the analysis in *Russello* v. *United States*, which recognized that Congress used the broad term "interest," rather than a more re-

strictive term, "because [it] did not wish * * * to be limited by rigid and technical definitions drawn from other areas of the law." 464 U.S. at 21.

Third, even if the *Ivic* court were correct in concluding that Sections 1962(a) and (b) contemplate only enterprises in which funds can be invested or in which formal property interests can be acquired, it does not follow that entities that cannot violate those two sections must be removed entirely from the reach of other sections of the statute. The inapplicability of the full range of statutory provisions to an entity does not imply that the entity can *never* be a RICO "enterprise." See *United States* v. *Turkette*, 452 U.S. at 585 ("Even if one or more of the civil remedies might be inapplicable to a particular illegitimate enterprise, this fact would not serve to limit the enterprise concept").[4]

Nor does the *Ivic* court's conclusion follow from its premise. Even if Sections 1962(a) and (b) apply

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[4] *Ivic*'s gloss on the "enterprise" element, if widely followed, would significantly contract the scope of RICO, eliminating from its reach government agencies, courts, non-profit organizations, and other non-economic entities that the lower courts have consistently held to fall within the statutory definition. See, *e.g.*, *United States* v. *Hocking*, 860 F.2d 769, 778 (7th Cir. 1988) (Illinois Department of Transportation); *United States* v. *Yonan*, 800 F.2d 164, 167-168 (7th Cir. 1986) (Cook County State's Attorney's Office), cert. denied, 479 U.S. 1055 (1987); *United States* v. *De Peri*, 778 F.2d 963, 974 (3d Cir. 1985) (Philadelphia Police Department), cert. denied, 475 U.S. 1110 (1986); *United States* v. *Ferguson*, 758 F.2d 843, 853 (2d Cir.) (Black Liberation Army), cert. denied, 474 U.S. 1032 (1985); *United States* v. *Qaoud*, 777 F.2d 1105, 1116 (6th Cir. 1985) (office of Michigan District Court), cert. denied, 475 U.S. 1098 (1986); *United States* v. *Clark*, 646 F.2d 1259, 1263 (8th Cir. 1981) (office of county judge).

only to entities in which funds may be invested or in which an interest may be acquired, that does not mean that the entities covered by Sections 1962(a) and (b) necessarily have the making of money as their purpose. Not-for-profit organizations are not inherently incapable of receiving racketeering proceeds, nor are they necessarily less susceptible to any of the other abuses RICO sought to prevent.

The insubstantiality of the textual basis proffered by *Ivic* (and endorsed by the court of appeals in this case) for any "economic motive" requirement is revealed by the fact that *Ivic*, the Second Circuit's cases following *Ivic*, and the court of appeals' opinion in this case all hold that the "enterprise" need not be shown to have an economic purpose after all—as long as the predicate acts are motivated by such a purpose. See *United States* v. *Bagaric*, 706 F.2d 42, 56-57 (2d Cir.) (enterprise composed of terrorists who sought Croatian independence, and who murdered those who failed to comply with extortion letters designed to raise money for that cause), cert. denied, 464 U.S. 840 (1983); *United States* v. *Ivic*, 700 F.2d at 65; Pet. App. A31. That the requisite economic motive or purpose may be found in the racketeering acts, even when the enterprise is shown to have a primarily "political" purpose, belies any claim that the term "enterprise" incorporates the requirement adopted by the court of appeals.

3. The *Ivic* court and the court of appeals in this case also relied on the legislative history of RICO, which shows that a principal concern of RICO's drafters was "the infiltration of organized crime into legitimate business." Pet. App. A28; *United States* v. *Ivic*, 700 F.2d at 63. While the court of appeals conceded that Congress's concerns extended beyond

the infiltration of legitimate businesses by organized crime, it appeared to place some weight on the fact that "political terrorist organizations do not generate funds that could allow them to infiltrate legitimate business," Pet. App. A28-A29, as indicating that Congress's concerns "may not have" extended to the conduct "of political terrorists." *Id.* at A29.

The short answer to that assertion is that it is not the discussion of anticipated applications in the legislative history that defines the scope of a statute, but rather the language actually enacted by Congress. See *Sedima, S.P.R.L.* v. *Imrex Co.*, 473 U.S. 479, 495-496 n.13 (1985). As this Court has repeatedly emphasized, "[i]t is not the law that a statute can have no effects which are not explicitly mentioned in its legislative history." *Pittston Coal Group* v. *Sebben*, 488 U.S. 105, 115 (1988). See also *Moskal* v. *United States*, 498 U.S. 103, 111 (1990) ("This Court has never required that every permissible application of a statute be expressly referred to in its legislative history"). Because the statutory language does not encompass the limitation supposed by the court of appeals, the failure of the legislative history specifically to advert to the application of RICO urged by petitioners cannot be used to create an exception not otherwise found in the statute.[5]

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[5] The court of appeals' reliance on the reference in the legislative history to the infiltration of organized crime into legitimate businesses recalls the argument that was raised and rejected in *United States* v. *Turkette, supra.* There, the Court held that RICO was not meant to be restricted to combatting the infiltration of organized crime into legitimate businesses, but was meant to reach "the activities of enterprises organized and existing for criminal purposes." 452 U.S. at 591. Since its decision in *Turkette*, the Court has repeatedly re-

In any event, to the extent the legislative history speaks to the issue at all, it undermines the conclusion reached by the court of appeals. As originally proposed, the Organized Crime Control Act of 1970 did not contain a RICO provision. See S. 30, 91st Cong., 1st Sess. (1969), *reprinted in* 115 Cong. Rec. 829-832 (1969). Two bills were later introduced to correct that failing: S. 1623 ("The Criminal Activities Profits Act") and S. 1861 ("The Corrupt Organizations Act of 1969"). See S. 1623, 91st Cong., 1st Sess. (1969), *reprinted in* 115 Cong. Rec. 6995-6996 (1969); S. 1861, 91st Cong. 1st Sess. (1969), *reprinted in* 115 Cong. Rec. 9568-9571 (1969). See also S. Rep. No. 617, 91st Cong., 1st Sess. 83 (1969). Those two bills were consolidated as the RICO title (Title IX) of the Organized Crime Control Act. See 116 Cong. Rec. 584 (1970) (introduction of amended bill); *id.* at 591 (remarks of Sen. McClellan); *id.* at 35,197 (remarks of Rep. McCulloch). See generally *Reves* v. *Ernst & Young*, 113 S. Ct. at 1170-1171.

The definition of "enterprise" in S. 1861 was identical to that enacted in 18 U.S.C. 1961(4). The competing provision of S. 1623, on the other hand, was more narrowly limited to the investment of racketeering income in "any business enterprise," rather than

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jected the claim that RICO should be confined to cases raising the specter of organized crime's infiltration into legitimate businesses. See *H.J. Inc.* v. *Northwestern Bell Telephone*, 492 U.S. 229, 245-249 (1989); *Sedima, S.P.R.L.* v. *Imrex Co.*, 473 U.S. at 493-500. As the Court explained in *H.J. Inc.*, "[t]he occasion for Congress' action was the perceived need to combat organized crime. But Congress for cogent reasons chose to enact a more general statute, one which, although it had organized crime as its focus, was not limited in application to organized crime." 492 U.S. at 248.

simply in an "enterprise." See 115 Cong. Rec. 6995 (1969); S. 1623, 91st Cong., 1st Sess. § 2 (1969). Thus, while S. 1623 apparently contemplated that only enterprises engaged in "business" would come within the reach of the statute, Congress deliberately eschewed that approach when it adopted the broader language of S. 1861—that " 'enterprise' includes any * * * group of individuals associated in fact." 115 Cong. Rec. 9569 (1969). Where, as here, Congress "includes limiting language in an earlier version of a bill but deletes it prior to enactment, it may be presumed that the limitation was not intended." *Russello* v. *United States*, 464 U.S. at 23-24. Thus, far from supporting the narrow construction adopted by the court of appeals, the legislative history of RICO indicates that Congress considered and rejected such a limitation.

4. The court of appeals also adverted to, and appeared to find persuasive, *Ivic*'s reliance on guidelines for RICO prosecutions issued by the Department of Justice in 1981, which the *Ivic* court believed were entitled to deference under administrative law principles. See 700 F.2d at 64. The guideline on which *Ivic* relied was superseded in 1984 to provide, contrary to the court's position in *Ivic*, that an association-in-fact enterprise must be "directed toward an economic *or other identifiable goal*." U.S. Attorney's Manual § 9-110.360 (Mar. 9, 1984) (emphasis added).

The *Ivic* court erred in relying on the Department of Justice's RICO guidelines to reach its conclusion. To begin with, it is open to question whether the Department's construction of a criminal statute is entitled to administrative deference. See *Crandon* v. *United States*, 494 U.S. 152, 177 (1990) (Scalia, J.,

concurring in judgment). In any event, when such deference is appropriate, an agency's interpretation of the law may be used only to clarify statutory ambiguities; deference does not come into play unless the statute in question is ambiguous. See *INS* v. *Cardoza-Fonseca*, 480 U.S. 421, 447-448 (1987). In light of the breadth of RICO's language, there can be no claim that the statute is ambiguous with respect to the issue presented here. Finally, the United States Attorney's Manual is not intended to incorporate the Department's view of what the law is, but merely to provide internal guidance on the exercise of prosecutorial discretion. Because of that focus, the Manual expressly notes that it is "not intended to, does not, and may not be relied upon to create any rights, substantive or procedural, enforceable at law by any party in any matter civil or criminal." U.S. Attorney's Manual § 1-1.100 (Oct. 1, 1988). See *United States* v. *Carson*, 969 F.2d 1480, 1495 n.8 (3d Cir. 1992); *United States* v. *Senibaldi*, 959 F.2d 1131, 1136 (1st Cir. 1992). The Department's decision, at some point in the past, not to focus its enforcement efforts on noneconomic enterprises thus does not suggest that the statute should be read to exclude such enterprises from its reach.[6]

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[6] Indeed, the cases in which this Court has declined to restrict the scope of RICO to activities typical of organized crime involved applications of the statute that Department of Justice prosecutors would not have pursued under the internal RICO guidelines then in force. *Sedima* involved a garden-variety commercial dispute affecting only two parties and in which the RICO claims were predicated simply on the commission of mail and wire fraud—facts that would not ordinarily have warranted a federal criminal prosecution under the then-applicable guidelines. See *Sedima, S.P.R.L.* v. *Imrex*

5. In addition to lacking a foundation in the statutory language, the legislative history, or any applicable canon of statutory construction, the "economic motive" requirement endorsed by the court of appeals poses serious definitional problems that bear little, if any, relation to the policies of RICO. Among those problems are the extent to which a financial purpose must be present before the court of appeals' "economic motive" requirement is satisfied, and whether the "economic motive" must have caused either the formation of the enterprise or the commission of one or more of the predicate crimes. An organization engaging in a pattern of unlawful acts may do so principally for political or religious reasons, but the acts may have some incidental economic benefits for the organization—such as increasing contributions from members and supporters. See *United States* v. *Ellison*, 793 F.2d 942, 945, 950 (8th Cir.) (white supremacist group's arson "produce[d] operating funds" and "bolster[ed] * * * members' morale and commitment to [the group]"), cert. denied, 479 U.S. 937 (1986). The court of appeals' analysis leaves it entirely unclear how much economic

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Co., 473 U.S. at 502-503 (Marshall, J., dissenting). And in *H.J. Inc.* the Court rejected the claim that the "pattern" element of the statute requires a showing that the predicate acts of racketeering were committed in furtherance of multiple criminal "schemes," and went on to hold "[that Congress] envision[ed] a concept of sufficient breadth that it might encompass multiple predicates within a single scheme." *H.J. Inc.* v. *Northwestern Bell Telephone Co.*, 492 U.S. at 237. In our brief as *amicus curiae* in *H.J. Inc.*, we advised the Court that "as a matter of prosecutorial discretion" the Department of Justice followed "a general policy against charging multiple predicate acts based on a single episode of criminal conduct." See 87-1252 Brief for the United States as Amicus Curiae Supporting Petitioners at 12-13 n.6.

benefit would be enough to convert "political" or "religious" conduct falling outside RICO into "economic" conduct falling within the statute's reach.

Moreover, the inquiry required by the court of appeals conflicts with the longstanding principle that motive and purpose, while sometimes relevant evidence, are not generally elements of crimes. Rollin M. Perkins & Ronald N. Boyce, *Criminal Law* 927-928 (3d ed. 1982). See also *United States* v. *Pomponio*, 429 U.S. 10, 12-13 (1976); *United States* v. *Malinowski*, 472 F.2d 850, 855-856 (3d Cir.), cert. denied, 411 U.S. 970 (1973); *United States* v. *Cullen*, 454 F.2d 386, 390-392 (7th Cir. 1971) (Stevens, J.); *United States* v. *Moylan*, 417 F.2d 1002, 1004 (4th Cir. 1969), cert. denied, 397 U.S. 910 (1970). Whether acts of extortion or arson are motivated by a long-term political or religious purpose, or whether that purpose is being claimed in a given case as a conscious charade or subconscious pretense for more mundane criminal aims, is a difficult question to resolve, and it is irrelevant to the traditional concerns of the criminal law. It is also irrelevant to the policies of RICO, since the effects of a pattern of arson or extortion are the same regardless of the motives of those involved.

After confronting those questions in cases following *Ivic*, the Second Circuit has disavowed any inquiry into "long-term pecuniary objectives which in some sense can be said to supersede accompanying political or religious ones." *United States* v. *Bagaric*, 706 F.2d at 54-55. The Second Circuit, however, has continued to adhere to the vague formulation that "*some* financial purpose" is required by RICO. *United States* v. *Ferguson*, 758 F.2d at 853. That amorphous requirement is incapable of principled administration

by the courts or the government, and it finds no support in the statutory text. It should accordingly be rejected.

B. The Courts Below Rested Their Decision To Dismiss Solely On Their Incorrect Understanding Of RICO

The courts below rested their decision to dismiss solely on their incorrect conclusion that RICO requires proof of an "economic motive" on the part of the defendant. Those courts have had no opportunity to assess respondents' motion to dismiss under the correct legal standards, untainted by their erroneous views of RICO. Applying the correct legal standards, the judgment dismissing the complaint should be reversed.

Because respondents obtained the dismissal on a motion under Federal Rule of Civil Procedure 12(b)(6), this Court must construe the facts alleged in the complaint and the RICO Case Statement in the light most favorable to petitioners. *H.J. Inc* v. *Northwestern Bell Telephone Co.*, 492 U.S. at 249. And the Court may only affirm the dismissal of petitioners' complaint if it is "beyond doubt" that petitioners "can prove no set of facts" entitling them to relief, *Conley* v. *Gibson*, 355 U.S. 41, 45-46 (1957); that is, only "if 'it is clear that no relief could be granted under any set of facts that could be proved consistent with the allegations.'" *H.J. Inc.* v. *Northwestern Bell Telephone Co.*, 492 U.S. at 249-250.

Petitioners' complaint and RICO Case Statement allege that respondents and their co-conspirators engaged in a "pattern" of extortion, which they committed through numerous other crimes, including "bombings," "arson," "threats to clinic employees," and "harassment of patients and staff." RICO Case

Statement at 10. Arson, threats of arson, and extortion are all predicate crimes under RICO. See 18 U.S.C. 1961(1)(A) and (1)(B). Petitioners have also alleged that PLAN, an interstate coalition of anti-abortion groups and individuals whose "objective is to close clinics that perform abortions through the commission of extortionate acts" (RICO Case Statement at 13), is the "enterprise." PLAN unquestionably is a "union or group of individuals associated in fact" and therefore it may properly constitute an "enterprise" under RICO. See 18 U.S.C. 1961(4). No more is required to establish respondents' liability under RICO. See *Sedima, S.P.R.L.* v. *Imrex Co.*, 473 U.S. at 496-497. Under the statutory analysis set forth above, and consistent with the allegations of petitioners' pleadings, it is most assuredly not "beyond doubt" that petitioners can prove no set of facts entitling them to relief under RICO.

CONCLUSION

The judgment of the court of appeals should be reversed.

Respectfully submitted.

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AUGUST 1993

APPENDIX

18 U.S.C. 1961 provides:

As used in this chapter—

(1) "racketeering activity" means (A) any act or threat involving murder, kidnaping, gambling, arson, robbery, bribery, extortion, dealing in obscene matter, or dealing in narcotic or other dangerous drugs, which is chargeable under State law and punishable by imprisonment for more than one year; (B) any act which is indictable under any of the following provisions of title 18, United States Code: Section 201 (relating to bribery), section 224 (relating to sports bribery), sections 471, 472, and 473 (relating to counterfeiting), section 659 (relating to theft from interstate shipment) if the act indictable under section 659 is felonious, section 664 (relating to embezzlement from pension and welfare funds), sections 891-894 (relating to extortionate credit transactions), section 1029 (relating to fraud and related activity in connection with access devices), section 1084 (relating to the transmission of gambling information), section 1341 (relating to mail fraud), section 1343 (relating to wire fraud), section 1344 (relating to financial institution fraud), sections 1461-1465 (relating to obscene matter), section 1503 (relating to obstruction of justice), section 1510 (relating to obstruction of criminal investigations), section 1511 (relating to the obstruction of State or local law enforcement), section 1512 (relating to tamper-

ing with a witness, victim, or an informant), section 1513 (relating to retaliating against a witness, victim, or an informant), section 1951 (relating to interference with commerce, robbery, or extortion), section 1952 (relating to racketeering), section 1953 (relating to interstate transportation of wagering paraphernalia), section 1954 (relating to unlawful welfare fund payments), section 1955 (relating to the prohibition of illegal gambling businesses), section 1956 (relating to the laundering of monetary instruments), section 1957 (relating to engaging in monetary transactions in property derived from specified unlawful activity), section 1958 (relating to use of interstate commerce facilities in the commission of murder-for-hire), sections 2251-2252 (relating to sexual exploitation of children), sections 2312 and 2313 (relating to interstate transportation of stolen motor vehicles), sections 2314 and 2315 (relating to interstate transportation of stolen property), section 2321 (relating to trafficking in certain motor vehicles or motor vehicle parts), sections 2341-2346 (relating to trafficking in contraband cigarettes), sections 2421-24 (relating to white slave traffic), (C) any act which is indictable under title 29, United States Code, section 186 (dealing with restrictions on payments and loans to labor organizations) or section 501(c) (relating to embezzlement from union funds), (D) any offence involving fraud connected with a case under title 11, fraud in the sale of securities, or the felonious manufacture, importation, receiving, concealment, buying, selling, or otherwise dealing in narcotic or other dangerous drugs,

punishable under any law of the United States, or (E) any act which is indictable under the Currency and Foreign Transactions Reporting Act;

(2) "State" means any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, any territory or possession of the United States, any political subdivision, or any department, agency, or instrumentality thereof;

(3) "person" includes any individual or entity capable of holding a legal or beneficial interest in property;

(4) "enterprise" includes any individual, partnership, corporation, association, or other legal entity, and any union or group of individuals associated in fact although not a legal entity;

(5) "pattern of racketeering activity" requires at least two acts of racketeering activity, one of which occurred after the effective date of this chapter and the last of which occurred within ten years (excluding any period of imprisonment) after the commission of a prior act of racketeering activity;

(6) "unlawful debt" means a debt (A) incurred or contracted in gambling activity which was in violation of the law of the United States, a State or political subdivision thereof, or which is unenforceable under State or Federal law in whole or in part as to principal or interest because of the laws relating to usury, and (B) which was incurred in connection with the business of gambling in violation of the law of the United States, a State or political subdivision thereof, or the business of lending money or a

thing of value at a rate usurious under State or Federal law, where the usurious rate is at least twice the enforceable rate;

(7) "racketeering investigator" means any attorney or investigator so designated by the Attorney General and charged with the duty of enforcing or carrying into effect this chapter;

(8) "racketeering investigation" means any inquiry conducted by any racketeering investigator for the purpose of ascertaining whether any person has been involved in any violation of this chapter or of any final order, judgment, or decree of any court of the United States, duly entered in any case or proceeding arising under this chapter;

(9) "documentary material" includes any book, paper, document, record, recording, or other material; and

(10) "Attorney General" includes the Attorney General of the United States, the Deputy Attorney General of the United States, the Associate Attorney General of the United States, any Assistant Attorney General of the United States, or any employee of the Department of Justice or any employee of any department or agency of the United States so designated by the Attorney General to carry out the powers conferred on the Attorney General by this chapter. Any department or agency so designated may use in investigations authorized by this chapter either the investigative provisions of this chapter or the investigative power of such department or agency otherwise conferred by law.

18 U.S.C. 1962 provides:

(a) It shall be unlawful for any person who has received any income derived, directly or indirectly, from a pattern of racketeering activity or through collection of an unlawful debt in which such person has participated as a principal within the meaning of section 2, title 18, United States Code, to use or invest, directly or indirectly, any part of such income, or the proceeds of such income, in acquisition of any interest in, or the establishment or operation of, any enterprise which is engaged in, or the activities of which affect, interstate or foreign commerce. A purchase of securities on the open market for purposes of investment, and without the intention of controlling or participating in the control of the issuer, or of assisting another to do so, shall not be unlawful under this subsection if the securities of the issuer held by the purchaser, the members of his immediate family, and his or their accomplices in any pattern or racketeering activity or the collection of an unlawful debt after such purchase do not amount in the aggregate to one percent of the outstanding securities of any one class, and do not confer, either in law or in fact, the power to elect one or more directors of the issuer.

(b) It shall be unlawful for any person through a pattern of racketeering activity or through collection of an unlawful debt to acquire or maintain, directly or indirectly, any interest in or control of any enterprise which is engaged in, or the activities of which affect, interstate or foreign commerce.

(c) It shall be unlawful for any person employed by or associated with any enterprise engaged in, or the activities of which affect, interstate or foreign commerce, to conduct or participate, directly or indirectly, in the conduct of such enterprise's affairs through a pattern of racketeering activity or collection of unlawful debt.

(d) It shall be unlawful for any person to conspire to violate any of the provisions of subsection (a), (b), or (c) of this section.

18 U.S.C. 1964 provides:

(a) The district courts of the United States shall have jurisdiction to prevent and restrain violations of section 1962 of this chapter by issuing appropriate orders, including, but not limited to: ordering any person to divest himself of any interest, direct or indirect, in any enterprise; imposing reasonable restrictions on the future activities or investments of any person, including, but not limited to, prohibiting any person from engaging in the same type of endeavor as the enterprise engaged in, the activities of which affect interstate or foreign commerce; or ordering dissolution or reorganization of any enterprise, making due provision for the rights of innocent persons.

(b) The Attorney General may institute proceedings under this section. Pending final determination thereof, the court may at any time enter such restraining orders or prohibitions, or take such other actions, including the acceptance of satisfactory performance bonds, as it shall deem proper.

(c) Any person injured in his business or property by reason of a violation of section 1962 of this chapter may sue therefor in any appropriate United States district court and shall recover threefold the damages he sustains and the cost of the suit, including a reasonable attorney's fee.

(d) A final judgment or decree rendered in favor of the United States in any criminal proceeding brought by the United States under this chapter shall estop the defendant from denying the essential allegations of the criminal offense in any subsequent civil proceeding brought by the United States.

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